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ALTERNATIVES TO A CONSTITUTIONAL AMENDMENT: HOW CONGRESS MAY PROVIDE FOR THE QUICK, TEMPORARY FILLING OF HOUSE MEMBER SEATS IN EMERGENCIES BY STATUTE

*Paul Taylor**

INTRODUCTION

Recently, some have argued that a constitutional amendment is necessary to provide for the temporary appointment of House members to fill seats left vacant by terrorist attacks directed at Congress and resulting in large numbers of casualties. Norman Ornstein of the American Enterprise Institute, for example, has written that “[i]f a large number of House members were disabled and/or killed, the Constitution limits replacement to special elections As a general rule, I oppose constitutional amendments. But there is no other way to confront this problem.”¹ Such an amendment, H.J. Res. 67, introduced in the 107th Congress, would authorize governors to appoint persons to take the place temporarily of members who had died or become incapacitated when 25% or more of all House members were

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¹ Norman Ornstein, *Worst Case Scenarios Demand the House’s Immediate Attention*, ROLL CALL, Nov. 8, 2001, at 8.

unable to perform their duties.² However, this article explores the bases for congressional authority, by statute, to provide for the quick, temporary filling of House member seats in emergencies.

As the Congressional Research Service has pointed out,³ H.J. Res. 67 is not the first proposed amendment of its kind to have been introduced. From the 1940s through 1962, the issue of filling House vacancies in the event of a national emergency generated considerable interest among some members of Congress during the “Cold War” with the Soviet Union. More than thirty proposed constitutional amendments that provided for temporarily filling House vacancies or selecting successors in case of the disability of a significant number of representatives were introduced from the 79th through the 87th Congress.⁴ The House has never voted on any of these proposals.⁵

² See H.J. Res. 67, § 1.

³ See Sula P. Richardson, *House Vacancies: Selected Proposals to Allow for Filling Them Due to National Emergencies*, Cong. Res. Serv. (CRS), at 3 n.5 (Dec. 3, 2001).

⁴ The proposals are as follow: H.J. Res. 362, 79th Cong. (1945-1947); H.J. Res. 34, S.J. Res. 161, 80th Cong. (1947-1949); H.J. Res. 48, 81st Cong. (1949-1951); H.J. Res. 155, 166, S.J. Res. 59, 75, 82d Cong. (1951-1953); H.J. Res. 135, 159, 244, 507, S.J. Res. 39, 150, 83d Cong. (1953-1955); H.J. Res. 50, 295, 322, 325, 475, S.J. Res. 8, 84th Cong. (1955-1957); H.J. Res. 52, 105, S.J. Res. 157, 85th Cong. (1957-1959); H.J. Res. 30, 519, S.J. Res. 85, 86th Cong. (1959-1961); H.J. Res. 29, 74, 91, 508, 893, S.J. Res. 123, 87th Cong. (1961-1963).

⁵ Many of the current issues raised and policy arguments offered in support of or in opposition to the temporary appointment of representatives are the same as those that were made fifty years ago. See 100 CONG. REC. 7660 (1954) (remarks of Senator Knowland).

The proposed amendment is a form of insurance which, of course, we hope will never have to be used, but, in view of the fact that we are on notice, at least, that it would be conceivably possible to eliminate the House of Representatives . . . by a single attack on the Nation's Capital, I believe that we can no longer, as prudent citizens and as prudent Members of the House and the Senate, ignore that possibility.

Id. See also APPOINTMENT OF REPRESENTATIVES IN TIME OF NATIONAL EMERGENCY, S. REP. NO. 1459, at 3 (1954) (“Acts of violence may encompass attacks by atomic or hydrogen weapons, germ warfare, or even wholesale assassination of Members of the House by less spectacular

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H.J. Res. 67 and similar proposals are based implicitly on the understanding that the Constitution does not provide a mechanism for the temporary appointment of House members following vacancies. This understanding is based on the Seventeenth Amendment to the Constitution, which provides for the popular election of senators and the filling of Senate seat vacancies through gubernatorial appointments,⁶ and the fact that there is no similar provision in the Constitution explicitly authorizing states to provide for temporary appointments of House members. Alternatively, this article explores the bases for congressional authority, by statute, to provide for the quick, temporary filling of House member seats in emergencies. By providing for the temporary filling of vacant House seats by statute, rather than by constitutional amendment, Congress could more flexibly adapt to particular emergency situations and avoid the lengthy amendment process. Neither the intent behind the Seventeenth Amendment, nor the Constitution's voting rights provisions, prohibit Congress' exercise of its authority under Article I, section 4, Clause 1 to provide for the temporary filling of vacant House seats either through elections by a limited electorate or possibly by appointment.

weapons.”).

The events of September 11, 2001, have raised additional issues. Suicidal terrorists may act independently from sovereign nations and may not be deterred from using weapons of mass destruction because of the possible consequences for their own people. On the other hand, the situation in the 1950s may have been even more dire than today because a nuclear attack was expected to occur, if at all, with overwhelming force that would have destroyed much if not most of the American land mass. *See* 100 CONG. REC. 7661 (1954) (remarks of Senator Knowland) (“[I]n the event of an atomic attack . . . we may assume, at least for purposes of our discussion, that in the various States of the Union . . . there would be a simultaneous enemy attack. It might be very difficult even to hold elections within a period of 60 days.”).

⁶ U.S. CONST. amend. XVII.

I. THE SEVENTEENTH AMENDMENT AND CONGRESS'
AUTHORITY TO MAKE REGULATIONS GOVERNING THE TIME,
PLACES AND MANNER OF HOLDING FEDERAL ELECTIONS

Prior to adoption of the Seventeenth Amendment, Article I, Section 3, of the Constitution provided that senators would be chosen by state legislatures. Because state legislatures were often in session for only small portions of the year, Article I, Section 3, provided that "during the Recess of the Legislature of any State, the executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such vacancies."⁷ Debates on the Seventeenth Amendment do not indicate that the amendment was intended to do anything other than provide for the popular election of senators, with the temporary appointment language of Article I, Section 3 simply carrying over into the Seventeenth Amendment.⁸

⁷ U.S. CONST. art. I, § 3; *see also* THE CONSTITUTION OF THE UNITED STATES AND THE DECLARATION OF INDEPENDENCE 2-3 (U.S. Gov't Printing Office 2000).

⁸ The congressional debates over the Seventeenth Amendment also lend some support to the view that, at least in the minds of those addressing the question during such congressional debates, Congress already had the authority to enact a law authorizing the temporary filling of vacant House seats in the event of an emergency.

The Senate initially proposed and passed the Seventeenth Amendment that is part of our Constitution today. That amendment provides as follows:

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

U.S. CONST. amend. XVII.

When the House considered its version of the Seventeenth Amendment, it considered a proposed amendment that denied Congress its existing constitutional authority under Article I, Section 4 of the Constitution "to alter"

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state laws governing the election of senators. The relevant portion of H.J. Res. 39 that the House considered stated that “[t]he times, places, and manner of holding elections for Senators shall be as prescribed in each State by the Legislature thereof.” *See* 47 CONG. REC. 203 (1991). This amendment would have given state legislatures the exclusive authority to make laws governing the election of senators. Many congressmen opposed the change on the grounds that it denied Congress the ability to guarantee that senators would be sent to Congress in “emergency” situations. *See* 47 CONG. REC. 233 (1911) (remarks of Mr. Saunders). Those who opposed such a change stressed the importance of Congress’ ability to preserve itself in the event of unpredictable future events. Congressman Cannon stated the following:

I will not vote for such an amendment The Federal Government of the United States, a Government of limited power, supreme where power is granted under the Constitution, should always have the power to perpetuate itself without regard to what any States may do in failing to perform their duty.

47 CONG. REC. 213 (1911) (remarks of Mr. Cannon). Congressman Nye asked, “Can we afford to divest Congress of a constitutional power which in its very nature is essential to the preservation of the Nation? What emergencies may arise in the future we can not tell, nor in what State or section nor at what time.” 47 CONG. REC. 230 (1911) (remarks of Mr. Nye). Congressman Lafferty stated, “[I]n the very nature of things it shocks the conscience or the intelligence of a lawyer . . . that Congress should surrender the power of providing for its own perpetuity.” 47 CONG. REC. 227 (1911) (remarks of Mr. Lafferty). Congressman Saunders stated, “It has been suggested that this language [in the original Constitution giving Congress the power ‘to alter’ elections laws enacted by state legislatures] was inserted to enable the Congress of the United States . . . to preserve itself in time of emergency.” 47 CONG. REC. 233 (1911) (remarks of Mr. Saunders). Congressman Miller stated the following:

It seems to me . . . that one great branch of Government [the Senate] is hereby surrendering its power to perpetuate and maintain itself By refusing to elect at all, [state legislatures could create a situation in which] the legislative arm of the Federal Government would be paralyzed. Many men now live who witnessed almost one-half of the States withdraw from the Union and refuse to send Members to Congress. That which happened once may happen again

47 CONG. REC. 219 (1911) (remarks of Mr. Miller). These comments regarding the possibility that states may secede in the future and fail to conduct elections of senators and congressmen implies that Congress has the authority to enact laws providing for the temporary filling of vacant House seats when it

In other words, the history of the adoption of the Seventeenth Amendment does not indicate that Congress, in allowing for states to provide for temporary appointment of senators, intended to deny a similar mechanism to Congress—under its authority granted in other provisions of the Constitution—to fill temporarily vacant House seats. Indeed, Article I, Section 4, Clause 1 of the Constitution may provide such a mechanism.⁹ That provision states that “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations”¹⁰ Under this provision, Congress might, by statute, provide for the temporary filling of vacant House seats by either authorizing states to provide for temporary appointments of House members, by authorizing elections of House members by a restricted electorate, or by providing itself with such authority in the legislation. Congress could pass such legislation following the need to fill vacancies, even if there were only three surviving House members.¹¹ Each of those situations

proves impossible or difficult to conduct prompt general elections in a particular state.

In any case, the House ultimately voted to accept the original Senate-passed version of the Seventeenth Amendment and to reject a provision taking away Congress’ authority “to alter” state election laws in cases of “emergency.” See 47 CONG. REC. 233 (1911) (remarks of Mr. Saunders). While the House, on April 13, 1911, passed a version of the Seventeenth Amendment that included an additional clause denying Congress its existing constitutional authority to alter state laws governing the election of senators, on April 23, 1911, the Senate voted to insist on its version of the Seventeenth Amendment, which did not contain such a provision, and on May 13, 1911, the House passed the Senate’s version of the Seventeenth Amendment, which is now part of our Constitution. See U.S. Const. Amend. XVII.

⁹ U.S. CONST. art. I, § 4, cl. 1.

¹⁰ *Id.* (emphasis added).

¹¹ Article 1, Section 5 provides that “a Majority of each [House] shall constitute a Quorum to do Business,” and that provision has been interpreted by Congress to mean a majority of members who have been duly sworn, chosen, and living. U.S. CONST. art. I, § 5; House Manual, § 53 (“So the decision of the House now is that after the House is once organized the quorum consists of a majority of those members chosen, sworn, and living

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would still constitute a quorum under House rules, after which the Senate could then pass the legislation. Further, if Congress acted after any such tragedy, it would be able to assess the actual emergency at hand instead of attempting to predict the contours of an imagined future emergency.¹²

whose membership has not been terminated by resignation, or by the action of the House.”). Congress is authorized to interpret the rules governing its own proceedings by Article I, Section 5 of the Constitution, which provides that “Each House may determine the Rules of its Proceedings” This would be so even if massive vacancies occurred before a new House in a new Congress had adopted its rules for the session. One of the first items of business the House addresses in each new Congress is the adoption of rules that will govern its proceedings during that Congress. Until the new rules are adopted, the House operates under “general parliamentary procedure,” which allows a simple majority vote to decide an issue or close debate. *See* 107 CONG. REC. 239 (1961). Under the general parliamentary law that governs before the adoption of the standing rules, a quorum is established by the presence of a majority of those listed on the roll of members-elect prepared by the clerk of the preceding Congress pursuant to 2 U.S.C. § 26 (1997). The clerk does not include on that roll a member-elect who is deceased. After a quorum of members-elect is established, a speaker is elected. Once sworn, the speaker administers the oath to members-elect. At that point a quorum is a majority of those so sworn. Officers are then elected, and rules are adopted. At that point a quorum is a majority of those living and sworn or such other number as the rules might specify for a particular purpose. Therefore, a vote of as few as two out of three living and sworn members could enact the rules governing the House in a new Congress.

¹² In the event that not even three House members were alive or not incapacitated, martial law could be imposed with its consequent administration either ratified or rejected by a functional Congress that is subsequently composed. According to one historian:

That martial law was not always considered oppressive is shown by the fact that citizens sometimes petitioned for it. Some Philadelphians, for instance, requested the President to declare martial law in their city at the time of [Confederate General Robert E.] Lee’s invasion to enable them to put the city in a proper state of defense. Nor should we suppose that the existence of martial law necessarily involved a condition of extensive or continuous military restraint. Beginning with September, 1863, the District of Columbia was subjected to martial law, and this state of affairs continued throughout the war, but it should not be supposed that residents of the capital city were usually conscious of serious curtailment of their

Such legislation could provide for the quick, temporary filling of House member seats in emergencies by, for example, providing that vacant House seats could be filled by an “election” with a very limited franchise in which only the governor and the highest-ranking member of each house of each state legislature may vote.¹³ Because the electorate in such an election would

liberties. The condition of martial law was here used as a means of military security. That martial law should be declared in areas of actual military operations was, of course, not remarkable.

See JAMES G. RANDALL, *CONSTITUTIONAL PROBLEMS UNDER LINCOLN* 170 (Univ. of Ill. Press 1964) (rev. ed.).

In fulfilling constitutional responsibilities to put down insurrection, rebellion, or invasion, the president may resort to invoking martial law. His action, in this regard, is subject to judicial review. See, e.g., *Ex parte Milligan*, 71 U.S. 2, 142 (1866) (“MARTIAL LAW PROPER . . . is called into action by Congress, or temporarily, when the action of Congress cannot be invited, and in the case of justifying or excusing peril, by the President, in times of insurrection or invasion, or of civil or foreign war, within districts or localities where ordinary law no longer adequately secures public safety and private rights.”); *Sterling v. Constantin*, 287 U.S. 378, 402-03 (1932). The president may also exercise certain authority to create a condition similar to, but not actually one of, martial law:

[In the event] the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

10 U.S.C. § 332 (1998).

¹³ The legislation outlined here could take the following form:

Section 1. If at any time one-quarter of the Members of the House of Representatives are unable to carry out their duties because of death or incapacity, the highest ranking executive officer and the highest ranking members of each branch of the legislature of a State represented by a Member who has died or become incapacitated may elect an otherwise qualified individual to take the place of the Member as soon as practicable but in no event later than seven days after the member’s death or incapacity has been certified by the President.

Section 2. An individual elected to take the place of a Member of the

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consist of only three people, it could be conducted quickly.

Indeed, Alexander Hamilton, in *Federalist No. 59*, foresaw the need for the national legislature—Congress—to have the constitutional authority to preserve itself in times of crisis. When discussing Article I, Section 4, Clause 1, Hamilton wrote that “I am greatly mistaken . . . if there be any article in the whole plan [of the Constitution] more completely defensible than this. Its propriety rests upon the evidence of this plain proposition, that every government ought to contain in itself the means of its own preservation.”¹⁴ Failure to recognize such a principle in the Federal Constitution, Hamilton wrote, would constitute “imperfection in the system which may prove the seed of future weakness, and perhaps anarchy.”¹⁵ Hamilton continued that “[members of the Constitutional Convention] have submitted the regulation of elections for the federal government, in the first instance, to the local administrations; [but] they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.”¹⁶

Congress cannot indefinitely suspend elections open to a larger electorate, as Article I, Section 3 of the Constitution requires that “[w]hen vacancies happen in the Representation

House of Representatives under Section 1 shall be treated as a Member of the House of Representatives and may serve until a Member is elected pursuant to a writ of election to fill the vacancy resulting from the death or incapacity.

This or similar legislation could further specify that the person chosen to fill a vacant House seat be a member of the same political party as its former occupant. Providing for the filling of vacant House seats with reference to political parties by statute also has the advantage of keeping out of the Constitution a reference to political parties. The Constitution currently contains no mention of political parties.

¹⁴ THE FEDERALIST NO. 59, at 362 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

¹⁵ *Id.*

¹⁶ *Id.* Article 1, Section 4, Clause 1 also gives state legislatures the authority to pass legislation so providing that vacant House seats representing their state be filled temporarily, which Congress may or may not supercede by law. U.S. CONST. art. I, § 4, cl. 1.

from any State, the Executive authority thereof shall issue Writs of Election to fill such Vacancies.”¹⁷ However, a requirement that writs of election—which simply require that there be an election of some sort—must issue following a vacancy does not in itself deny Congress the authority to provide for the election, by a very limited electorate of state political leaders, of members to temporarily fill House vacancies in certain emergency situations.

II. THE CONSTITUTION’S VOTING RIGHTS PROVISIONS

Legislation providing for the election of members to temporarily fill House vacancies would also not violate the Constitution’s voting provisions. The Constitution prohibits certain discriminatory barriers to the right to vote, such as those based on race,¹⁸ sex,¹⁹ poll taxes,²⁰ or age over 18 years,²¹ when such a right is extended. It does not guarantee, however, the right to vote per se.²² It follows that Congress could pass a law limiting the franchise to certain state political leaders who could fill vacant House seats temporarily as long as access to those positions of political leadership were not impeded by discriminatory barriers based on race, sex, or age over eighteen.

Also, a unanimous Supreme Court, in *Rodriguez v. Popular*

¹⁷ U.S. CONST. art. I, § 3.

¹⁸ See U.S. CONST. amend. XV, § 1.

¹⁹ See U.S. CONST. amend. XIX.

²⁰ See U.S. CONST. amend. XXIV, § 1.

²¹ See U.S. CONST. amend. XXVI, § 1.

²² See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 36 n. 78 (1973).

Since the right to vote, per se, is not a constitutionally protected right[,] references to that right are simply shorthand references to the protected right, implicit in our constitutional system, to participate in state elections on an equal basis with other qualified voters whenever the State has adopted an elective process for determining who will represent any segment of the State’s population.

Id. See also *Minor v. Happersett*, 88 U.S. 162, 178 (1874) (“[T]he Constitution of the United States does not confer the right of suffrage upon any one.”).

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Democratic Party,²³ held that Puerto Rico statutes that vested in a single political party the initial authority to appoint interim replacements for vacancies in the Puerto Rico legislature until the next regularly scheduled general election do not violate the Federal Constitution, including its Equal Protection Clause. Those challenging the statutes claimed that “qualified voters have a federal constitutional right to elect their representatives to the Puerto Rico Legislature, and that vacancies in legislative offices therefore must be filled by a special election open to all qualified electors” and that because such vacancies were not so filled, other “qualified voters” were denied “equal protection.”²⁴ The Supreme Court rejected both these arguments:

[T]he Puerto Rico statute at issue here does not restrict access to the electoral process or afford unequal treatment to different classes of voters or political parties. All qualified voters have an equal opportunity to select a district representative in the general election; and the interim appointment provision applies uniformly to all legislative vacancies, whenever they arise Obviously, a statute designed to deal with the occasional problem of legislative vacancies will affect only those districts in which vacancies actually arise. However, such a statute is not for this reason rendered invalid under equal protection principles. A vacancy in the legislature is an unexpected, unpredictable event, and a statute providing that all such vacancies be filled by appointment does not have a special impact on any discrete group of voters or candidates.²⁵

Neither does Article I, Section 2, Clause 1 of the Constitution require that elections, other than regularly held general elections, be open to an electorate sharing the same qualifications as those requisite for electors of “the most numerous Branch of the State

²³ 457 U.S. 1, 8 (1982) (stating that “it is clear that the voting rights of Puerto Rico citizens are constitutionally protected to the same extent as those of all other citizens of the United States”).

²⁴ *Id.* at 7.

²⁵ *Id.* at 10 n.10.

Legislature.”²⁶ That provision of the Constitution only requires that the “Electors in each State shall have the Qualifications requisite for electors of the most numerous Branch of the State Legislature” during elections for the House of Representatives conducted “every second year,” namely in general elections regularly held, not special elections to fill vacancies until the next general election.²⁷

²⁶ U.S. CONST. art. I, § 2, cl. 1.

²⁷ Article I, Section 2, Clause 1 provides in full that “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.” U.S. CONST. art. I, § 2. While there is some ambiguity regarding whether this qualifications clause applies only to general elections or to both general and special elections, if the latter is the case, state legislatures should be able to enact provisions for temporarily filling vacant House seats when, for example, the member’s death or incapacity has been certified by the governor. Such a law would simply declare that during a specified emergency situation, the electors of the most numerous branch of the state legislature would consist of only the governor and the highest-ranking member of each house of the state legislature.

It may be argued that Section 2 of the Fourteenth Amendment provides for a reduction in a state’s representatives in proportion to a state’s disenfranchisement of its male citizens over the age of twenty-one. Section 2 of the Fourteenth Amendment provides as follows:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for . . . Representatives in Congress . . . is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

U.S. CONST. amend. XIV, § 2.

This provision, however, has never been enforced, and it is unclear whether it would apply to only temporary reductions in the franchise triggered by emergency circumstances.

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III. CONGRESS'S AUTHORITY TO "ALTER" STATE REGULATIONS GOVERNING FEDERAL ELECTIONS

In arguing for the repeal of the clause in Article 1, Section 4 of our Constitution that gives Congress the authority "to alter" election laws enacted by state legislatures, Congressman Saunders argued in 1911 that "no one has ever been able to ascertain the extent of the power conferred by the present language [of the Constitution] upon the Congress of the United States."²⁸ That statement remains true today, and Congress' authority "to alter" election laws by providing for the temporary appointment of congressmen to fill vacant House seats is unclear. However, if through some terrible tragedy the vast majority of House members' seats were left vacant, there is further authority for the proposition that Congress could by statute provide for temporary appointments—rather than elections by a restricted electorate—to fill vacant House seats. While some may argue that Congress' power to "make or alter" regulations regarding the "election" of House members does not include the power to dispense with an election altogether, such an argument rests on the definition of the word "alter," one modern definition of which today is "to make different *without changing into something else*."²⁹ However, the framers of the Constitution were not likely to have recognized the definition of "alter" to include something as subtle as "to make different without changing into something else." The definition of "to alter" in *A Dictionary of the English Language* by Samuel Johnson, published in 1797 and on its eleventh edition at that time, is "[t]o change; to make *otherwise* than it is."³⁰

²⁸ 47 CONG. REC. 233 (1911) (remarks of Mr. Saunders).

²⁹ WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1991) (emphasis added).

³⁰ A catalog entry from Thomas Jefferson's library shows that Johnson's *English Dictionary* was part of Jefferson's personal collection. See THOMAS JEFFERSON'S LIBRARY: A CATALOG WITH THE ENTRIES IN HIS OWN ORDER (James Gilreath & Douglas L. Wilson eds., 1989) (emphasis added).

CONCLUSION

While it has become a sort of popular wisdom that the quick, temporary filling of House member seats in emergencies can be provided for only through a constitutional amendment, there is independent authority in the Constitution authorizing Congress, by statute, to do just that, if necessary, following a dire emergency. Neither the intent behind the Seventeenth Amendment, nor the Constitution's voting rights provisions, prohibit Congress' exercise of its authority under Article I, Section 4, Clause 1 to provide for the temporary filling of vacant House seats either through elections by a limited electorate or possibly by appointment.